Paper No. 42

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

Ex parte GRIGORY SHENKMAN

_____

Appeal No. 2004-1179
Application No. 09/127,284

_____

ON BRIEF

_____

Before HAIRSTON, GROSS, and NAPPI, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal of the rejections of claims 23 through 39.

The disclosed invention relates to a method and system for automatically routing incoming interaction requests in a hosted communication network.

Claim 23 is illustrative of the claimed invention, and it reads as follows:

> 23. A method for automatically routing incoming interaction requests in a hosted communication network, comprising steps of:
>
> (a) receiving a new interaction request from a customer;

(b) identifying the initiating customer of the interaction request;

(c) retrieving data specific to the customer;

(d) retrieving real-time variable data other than customer-specific data;

(e) using a specific algorithm, calculating a probable profit contribution for the pending interaction request based on the data retrieved in steps (c) and (d); and

(f) routing the pending interaction request automatically to an available resource based upon the results of the calculation using the algorithm of step (e).

The references relied on by the examiner are:

Levy et al. (Levy)	5,291,550	Mar. 1, 1994
Katz et al. (Katz)	6,055,513	Apr. 25, 2000 (filed Mar. 11, 1998)
Walker et al. (Walker)	6,088,444	Jul. 11, 2000 (filed Apr. 11, 1997)

Claims 23 through 28 and 34 through 39 stand rejected under the second paragraph of 35 U.S.C. § 112 for indefiniteness.

Claims 23, 24, 27 through 29, 32 through 35 and 37 through 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Walker in view of Levy.

Claims 25, 26, 30, 31 and 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Walker in view of Levy and Katz.

Reference is made to the brief (paper number 39) and the answer (paper number 40) for the respective positions of the appellant and the examiner.

OPINION

We have carefully considered the entire record before us, and we will reverse the indefiniteness rejection of claims 23 through 28 and 34 through 39, and sustain the obviousness rejections of claims 23 through 39.

Turning first as we must to the indefiniteness rejection, the examiner is of the opinion (answer, page 4) that the claims are indefinite because "[t]he phrase 'a specific algorithm' is vague and indefinite because it implies that the claimed invention utilizes a particular algorithm, but such an algorithm is never expanded upon in the claims." Appellant's disclosure (specification, page 19) that "it will be clear to the skilled artisan that there are a wide variety of specific algorithms that might be developed within the spirit and scope of the present invention in order to determine potential profitability, depending on such issues as the nature of products and services, the nature of the enterprise, and many other factors" coupled with appellant's argument (brief, pages 9 and 15) that an algorithm must be specifically chosen to calculate "potential

profitability of the pending interaction request" sends a clear signal that the appellant does not want the disclosed and claimed invention[1] to be limited to any one algorithm. We are of the opinion, therefore, that the broadly claimed phrase when read in light of the disclosure would have been understood by one of ordinary skill in the art. Thus, the indefiniteness rejection of claims 23 through 28 and 34 through 39 is reversed because the breadth of the claims is not equated with indefiniteness of the claims. In re Miller, 441 F.2d 689, 693, 169 USPQ 597, 600 (CCPA 1971).

Turning next to the obviousness rejections, we find that the broadly recited subject matter of claim 23 reads directly on the teachings of Walker. A method for automatically routing incoming interaction requests in a hosted communications network to different positions in a queue is disclosed by Walker (Figures 1 through 3; Abstract; column 1, lines 5 through 10). Walker receives a new interaction request from a customer via an incoming call (Abstract), and identifies the initiating

[1] The examiner has not rejected the claims on appeal for lack of enablement in spite of the fact that the disclosure does not present a specific algorithm that will perform the potential profitability calculation. In the absence of such a rejection, it appears that the skilled artisan would have known which algorithm to use to make the noted calculation.

caller/customer of the interaction request (Abstract). Walker retrieves data specific to the customer (e.g., items ordered in the past, dollar amounts of past customer orders, stored location of the customer) (Abstract; column 3, line 64 through column 4, line 8; column 6, lines 38 through 42). Walker also retrieves real-time variable data other than customer-specific data in the form of pricing data (Abstract; column 2, lines 54 through 57; column 5, lines 5 and 6). To the extent that the disclosed and claimed telephone communications system uses an algorithm to perform profit calculations, we find that the same type of system disclosed by Walker would likewise use an algorithm to perform calculations to derive economic/profit data based on the retrieved data (Abstract; column 3, lines 64 through 67; column 5, lines 54 through 56; column 6, lines 9 through 11). We reach such a conclusion because appellant's disclosure assumes that "anyone desiring to carry out the process would know of the equipment and techniques [(e.g., algorithms)] to be used, none being specifically described." In re Fox, 471 F.2d 1405, 1407, 176 USPQ 340, 341 (CCPA 1973). As indicated supra, Walker uses the probable profitability calculation to automatically route the calling customer to an available resource in the form of a location in the queue (Abstract; column 6, lines 9 through 19).

Based upon the teachings of Walker[2], the obviousness rejection of claim 23 is sustained. In sustaining a multiple reference rejection under 35 U.S.C. § 103(a), the Board may rely on one reference alone without designating it as a new ground of rejection. In re Bush, 296 F.2d 491, 496, 131 USPQ 263, 266-67 (CCPA 1961); In re Boyer, 363 F.2d 455, 458 n.2, 150 USPQ 441, 444 n.2 (CCPA 1966). The obviousness rejections of claims 24 through 39 are sustained because appellant has chosen to let all of the claims on appeal stand or fall together (brief, page 10), and because appellant has not challenged the examiner's contentions concerning the teachings of Katz.

DECISION

The decision of the examiner rejecting claims 23 through 28 and 34 through 39 under the second paragraph of 35 U.S.C. § 112 is reversed, and the decision of the examiner rejecting claims 23 through 39 under 35 U.S.C. § 103(a) is affirmed.

[2] The teachings of Levy (e.g., more profitable calls should be given a higher priority) are merely cumulative to those already found in Walker.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

KENNETH W. HAIRSTON Administrative Patent Judge	)	
ANITA PELLMAN GROSS Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
ROBERT NAPPI Administrative Patent Judge	)	

KWH/hh

CENTRAL COAST PATENT AGENCY
P.O. BOX 187
AROMAS, CA 95004